IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE CIVIL JURISDICTION

CIVIL APPLICATION NO. 55 OF 2004 IN C.P.59/2003

Shri. Rajaram S. Kamble. ...Petitioner.

Vs.

All India Shri. Shivaji Memorial Society & ors. ...Respondent.

Mr. R.K. Saroj with S.V. Pitre for the Petitioner.

Mr. Yogesh Mehta for the Respondent Nos. 1 to 3.

Mr. S.B. Deshmukh for Shri.A.V. Anturkar for the Respondent No.1.

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CORAM : R.S. MOHITE,J.
DATED : 5/5/2005.

P.C.:

1. This is a civil application filed by the applicant. The applicant has also filed a separate civil application being Civil Application No.12/2004 for intervention in the Contempt Petition. In the present civil application applicant seeks recall of an order dated 13.2.2004 passed in the main contempt petition. By the said order, upon a statement made by the advocate appearing on behalf of the respondent No.1 Management to the effect that both the Asstt. Teachers had been reinstated on the

single sanctioned post available and were being given half workload, the Management was directed to disburse the amount received from the State Govt. equally to both the teachers namely Mr. Kamble and Mr.Sarode. It was made clear in the said order that the said order was passed as an interim arrangement since an application for hearing writ petition filed by Mr. Kamble bearing W.P. No.2169/2000 was scheduled to be heard shortly. The contempt petition was directed to be placed on board after four months. The Advocates inform that the contempt petition thereafter appeared on board and the same was admitted.

2. It is contended by the applicant that the aforesaid order dated 13.2.2004 was obtained by the respondent No.1 Management on the basis of a false statement in respect of the workload, no letter whatsoever of reduction of workload was given to the applicant and the applicant worked as a teacher for the 11th and 12th std. in the academic year 2003.2004 and continued to discharge his duty as full time Asstt. Teacher.

3. In the affidavit in reply affirmed on 15.1.2005, filed by one Nirmala who is the competent authority

of the school and Jr. College, it is placed on record that the total workload for the single sanctioned post of full time teacher consisted of 24 periods in a week. That, out of this, 12 periods were for the 11th std. and 12 periods were for 12th std. Since both the teachers have been reinstated, half workload has been allotted to each of them. Mr. Kamble was given 12th std. periods for the year 2002.2003, 11th periods for the year 2003.2004 and 12th std. periods for the year 2004.05. Mr. Sarode was correspondingly given 11th std. periods for the year 2003.04, 12th std. periods for the year 2003.04 and 11th std. periods for the year 2004.05. This would clearly indicated that the workload has been divided between the two teachers. There is no rejoinder to this reply. However, the applicant has filed an additional affidavit on 14.2.2005 in which contents of paragraph-5 of the reply relating to workload has not been specifically denied.

4. Mr. Pitre then relied upon the Judgment of the Apex Court in the case of Hareshwar Prasad Paul and another Vs. Tarak Nath Ganguly and others reported in (2002) (s) S.C.C. 352. In the said Judgment the Apex Court has dealt with the issue of contempt

jurisdiction and has laid down that the court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the directions issued in the judgment or order and not to consider the question as to which the judgment or order should have contained. These observations would have bearing when contempt petition is heard on merits and would have no application while deciding upon the recall of my earlier order.

5. In this view of the matter, I am not inclined to recall my earlier order and the civil application stands dismissed.

6. It is made clear that this order will in no way affect the merits of the case of Mr. Kamble in Writ Petition No.2169/2002

(R.S. MOHITE, J.)